HON'BLE SRI JUSITCE GODA RAGHURAM

WRIT PETITON No.32036 of 1997

Dated 08-09-2006

Between:

Pala Subbanna,
R/o.Upparapalli, Siddhout,
Cuddapah District and others.

.....Petitioners

and

The Special Deputy Collector ((LA) Somasila Project Unit-IV, Rajampet, Cuddapah District and others.

.....Respondents

HON'BLE SRI JUSITCE GODA RAGHURAM

WRIT PETITON No.32036 of 1997

ORDER:

Subject to individual court fee being paid for each of the 91 petitioners within seven days from today, the writ petition is disposed of as under:-

The petitioners are aggrieved that the respondents have not referred their applications for enhancement of compensation to the Civil Court, under Section 18 of the Land Acquisition Act, 1984.

The petitioners claim to be residents of Upparpalli village, Siddout, Cuddapah District having houses in the village. They claim to have been given DKT house sites pattas. The respondent initiated land acquisition proposals for acquiring structures in various villages where the lands were facing submergence under the Somasila Project Backwaters. Insofar as the structures are concerned notification under Section 4 (1) of the Act was issued on 20-11-1980.

According to the petitioners, the award was passed on

29-12-1989 awarding some bulk compensation to the petitioners without awarding additional market value, solatium and interest.

The petitioners claim to have filed applications within time seeking reference to the Civil Court under Section 18 of the Act for enhancement of the compensation. Their objections however were referred to the Civil Court in spite of several representations.

Hence, the writ petition.

On behalf of the 1st respondent a counter is filed. It is admitted in the counter affidavit that at the time of award enquiry it was noticed that 90 structures relating to the petitioners were in existence in S.No.579 of Upparavallli village in an extent of Ac.28.33 cents.

No compensation was awarded for the 90 structures as they were erected in Government Poramboke lands and were treated as encroachments. It is also admitted that DKT Pattas were issued to the petitioners by the Mandal Revenue Officer, Vontimitta on 19-8-1987.

Responding to the petitioners grievance that their applications seeking reference to the Civil Court under Section 18 of the Act were not responded to as they ought

to have been, the answering respondents states that the Government in G.O.Ms.No.1307 Revenue (Assignment I) Department dated 23-12-1993 had *inter alia* directed that assignees of the Government lands would not be entitled for seeking reference under Section 18 of the Land Acquisition Act (for short ' the Act') or under Section 28-A of the Act. It is also asserted that compensation was paid to the petitioners for their structures which were sub merged as ex-gratia and not as entitlement of the petitioners and on the basis of the Government orders in G.O.Ms.No.180 Revenue (B) Department dated 9-2-1984 and G.O.M.S.No.43 Revenue (B) Department dated 23-1-1988. Since the petitioners are not entitled to seek reference to the civil Court under Section 18 of the Land Acquisition Act, as per G.O.Ms.No.1307 Revenue (Assignment I) Department dated 23-12-1993, their objections were not referred, is the singular defence.

Even as per the facts admitted by the respondents, the petitioners are interested persons within the meaning of the expression under Section 18 of the Act. They are thus entitled to seek reference to the civil Court under Section 18 of the Act. Such statutory right of the petitioners cannot be eclipsed by any executive fiat issued by the State Government. The State Government has no authority or competence to interdict the statutory

remedy available to a citizen.

At all times, under our constitutional scheme, executive power runs subservient to the Legislative mandate. Any execution order in clear transgression of the Legislative mandate must perishe.

The respondents as an executive agency must have ignored any order of the State Government, which runs counter to the provisions of Section 18 of the Act. This the respondent failed to do on a mistaken notion of greater fidelity to an executive fiat than to the Legislative mandate. The defense of the respondents to the allegations in the writ petition and to the relief sought herein, is wholly mis conceived and is rejected.

The writ petition is allowed. The respondents are directed to forthwith and in any event within a period of seven days from the date of receipt of a copy of this order, refer the objections of the petitioners to the award dated 29-12-1989 to the Civil Court under Section 18 of the Act.

As the failure of the respondents to refer the matter to the Civil Court on the fig leaf of a wholly illegal and unsustainable Government Orders, is perverse and illegal conduct and has unduly prolonged the petitioners' right to a statutory remedy, the writ petition is allowed with costs of Rs.250/- payable by the respondents to each of the

petitioners, within a period of two months from the date of receipt of a copy of this order. In default of the individual Court fee being paid as directed, the relief granted in this writ petition shall be conferred to the first petitioner and the writ petition stands dismissed in respect of the other petitioners.

8th September 2006

Note:-
Issue CC in one week.
(B/O)
mrb